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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue
Implementation and Administration of California
Renewables Portfolio Standard Program.

Rulemaking 06-05-027
(Filed May 25, 2006)

Order Instituting Rulemaking to Implement the
California Renewables Portfolio Standard
Program.

Rulemaking 04-04-026
(Filed April 22, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING ON
SOUTHERN CALIFORNIA EDISON COMPANY'S
MOTIONS TO FILE DATA UNDER SEAL**

Summary

This ruling disposes of various motions filed by Southern California Edison Company (SCE) in this proceeding and its predecessor proceeding, Rulemaking (R.) 04-04-026, for confidential treatment of data related to the Commission's Renewables Portfolio Standard (RPS) program. No party opposes the motions. I discuss the motions individually below.

1. SCE's 9/25/06 Motion

I grant SCE's September 25, 2006 motion, seeking confidential treatment in accordance with Decision (D.) 06-06-066 (issued in the Commission's "Confidentiality OIR" proceeding, R.05-06-040) of certain data from its 2007 RPS Procurement Plan (Plan). SCE justifies its motion on the grounds the relevant material from its Plan reveals its load forecast, which is deemed confidential in D.06-06-066. SCE explains its position based on the five criteria for confidential

treatment contained in that decision (and listed as “D.06-06-066 Matrix Requirements” in the table below):

Data at issue	D.06-06-066 Matrix Requirements	How moving party meets requirement
SCE's 2007 RPS Procurement Plan: Appendix 1, UDC ¹ Bundled Customer Sales 2007-2009 Appendix 1, APT ² 2008-2010 Appendix 1, APT Target % 2008 Appendix 1, IPT ³ 2008	That the material it is submitting constitutes a particular type of data listed in the Matrix	SCE asserts information covered in: Matrix ⁴ Section V(C) – “Load Forecast Information and Data – Electric, LSE ⁵ Total Energy Forecast, Bundled Customer” “Bundled customer sales” clearly meet the definition. SCE claims APT, IPT also meet definition because these numbers easily calculate back to SCE’s forecast of bundled customer energy.
	Which category or categories in the Matrix the data correspond to	Matrix Section V(C) – “Load Forecast Information and Data – Electric, LSE Total Energy Forecast, Bundled Customer”
	That the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data	Matrix Section V(C): “front three years of forecast data confidential.” SCE redacted information solely for 2007, 2008, 2009 (and 2010 for APT, because it can be used to calculate forecast of bundled customer energy.)
	That the information is not already public	SCE states the information is not already public.
	That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that	SCE masks only minimal data, and makes most data available; asserts it cannot further aggregate, redact,

¹ Utility Distribution Company.

² Annual Procurement Target.

³ Incremental Procurement Target.

⁴ The “IOU Matrix” – the Matrix at issue here – is Appendix 1 to D.06-06-066.

⁵ Load Serving Entity.

	allows partial disclosure	summarize, mask or otherwise protect.
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I agree with SCE's contention that the load forecast data, and information that allows one to calculate SCE's load forecast, is confidential pursuant to D.06-06-066.

However, parties who are "non-market participants" (as explained in D.06-12-030) may nonetheless have access to the confidential data pursuant to a protective order and/or nondisclosure agreement satisfactory to the parties. "Market participants" (also as defined in D.06-12-030) may also have access to the confidential data, but only under the circumstances set forth in D.06-12-030. Therefore, even though I grant SCE's motion, SCE shall nonetheless make the data (or a notice of availability) available to non-market participants and market participants who request it in accordance with D.06-12-030.

2. SCE's 8/1/06 Motion

SCE's 8/1/06 motion asserts a right to confidentiality on three grounds. I deny the motion on all grounds.

First, SCE claims the Matrix appended to D.06-06-066 provides for confidentiality for RPS projects that were not in operation on 8/1/06, on the grounds set forth in the table below:

Data at issue	D.06-06-066 Matrix Requirements	How moving party meets requirement
Information regarding the following contracts for 9 projects that are not operating: Kern Biomass Project, pg. B-12	That the material it is submitting constitutes a particular type of data listed in the Matrix	SCE asserts information covered in: Matrix Section VII(G) - "Bilateral Contract Terms and Conditions - Electric, Renewable Resource Contracts under RPS Program - Contracts without SEPs" ⁷
Liberty I Biofuels Power LLC, pg. B-14 Sierra Biomass LLC, pg. B-16	Which category or categories in the Matrix the data correspond to	
Green Borders Geothermal LLC, pg. B-18 SES Solar One LLC, pg. B-20	That the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data	This Matrix category requires that contract summaries be public (including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract, and online date). SCE asserts it has not redacted any such information from the 9 contracts.
Mountain View Power Partners IV, pg. B-22 PPM Energy, Inc., pg. B-24		Other terms may be confidential for three years, or until one year following contract expiration, whichever comes first. SCE claims it need not release status information about projects not yet in operation.
Coram Energy LLC, pg. B-26 Aero Energy LLC, pg. B-28	That the information is not already public That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure	SCE states the information is not already public.

⁶ SCE does not seek confidentiality protection with respect to reports concerning projects that are currently operating.

⁷ Supplemental Energy Payments.

Nothing in D.06-06-066 states that information on projects not operating is confidential. Indeed, D.06-06-066 makes clear that RPS data shall be open (*i.e.*, not confidential) to the maximum extent possible. The data at issue are contained in RPS contract summaries, which the Matrix requires to be public.

Second, SCE seeks protection for the data under Pub. Util. Code § 454.5(g) and GO 66-C. It asserts release of the subject data would put it at an “unfair business disadvantage” if released. However, D.06-06-066 prohibits a utility from claiming confidential treatment of data *covered in the Matrix* for reasons other set forth in the Matrix: “Where a party seeks confidentiality protection for data contained in the Matrix, its burden shall be to prove that the data match the Matrix category. . . . Unless and until we change or repeal General Order (GO) 66-C (or opt to leave it intact upon examination), it shall continue to apply to data *not* addressed in the Matrix.”⁸ Thus, I deny this aspect of SCE’s motion.

⁸ D.06-06-066, ordering paras. 2 & 4 (emphasis added).

Third, SCE seeks confidentiality pursuant to FERC⁹ Order No. 2003.¹⁰ It claims that it may redact information from the 9 contracts above for 3 reasons. First, SCE states that the Large Generator Interconnection Procedures (LGIP) the FERC promulgated in Order No. 2003 contains a confidentiality provision protecting any information supplied by either of the parties to the other prior to the execution of a Large Generator Interconnection Agreement (LGIA). However, the LGIP provides that the need for such confidentiality must be proven:

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.¹¹

SCE does not assert that its counterparty sought such confidentiality or otherwise expand on its confidentiality claim under Order No. 2003, and I deny its request on that basis.

Second, SCE states that pursuant to FERC Order No. 2003, it has consistently maintained the confidentiality of information supplied to it by

⁹ Federal Energy Regulatory Commission.

¹⁰ 104 F.E.R.C. ¶ 61,103, 2003 FERC LEXIS 1551.

generators pursuant to an interconnection request that has not already been made public. It cites no basis for this practice, which appears in any event to contradict the foregoing quoted paragraphs conditioning the right to confidentiality.

Third, SCE claims it could be liable for release of confidential information covered by the FERC LGIP. Again, it does not establish that its counterparty sought such confidentiality, so its request is denied.

SCE shall produce the redacted information (or a notice of availability of the data) to the service list and any other party on which it is required to serve its RPS compliance filings within 15 days of this ruling.

3. SCE's 12/12/05 Motion

SCE's motion, filed before the Commission made its procurement confidentiality decisions in D.06-06-066, seeks confidential treatment for material from its 2006 RPS Procurement Plan. SCE's claim is pursuant to confidentiality procedures that predate the specific decisions the Commission rendered in D.06-06-066.¹² However, SCE agreed in its motion to be bound by what the Commission decided in D.06-06-066 even though its motion predated the decision: "To the extent a determination is made in R.05-06-040 [the proceeding

¹¹ 2003 FERC LEXIS 1551, at *765.

¹² SCE cites Commission General Order (GO) 66-C ("Procedures for obtaining information and records in the possession of the Commission and its employees..."), Pub. Util. Code §§ 454.5(g) (confidential electric procurement information) and § 583 (records open to public inspection), and Evidence Code § 1060 (trade secrets). D.06-06-066 addresses each of these provisions.

in which the Commission issued D.06-06-066], SCE will make any necessary changes to its redacted materials in accordance with that decision.”¹³

SCE seeks protection of three types of information: 1) SCE’s renewable “net short” (the difference between the amount of renewable energy it must procure and the amount it has available from all sources), 2) terms and conditions of specific renewable contracts, and 3) the details of negotiations of those contracts.

SCE shall either supplement its motion within 15 days of the date of this ruling with the required information (using the table set forth below), or serve the sealed information (or a notice of availability) on that date to the parties to this proceeding and all parties on which it is required to serve its 2006 RPS Procurement Plan.

4. SCE’s 12/7/05 Motion

This motion also seeks confidential treatment prior to D.06-06-066. The data at issue relate to transmission upgrades SCE is planning or studying for RPS generators seeking interconnection with SCE’s network. SCE claims the materials are confidential based on FERC Order No. 2003 (discussed in connection with SCE’s 8/1/06 motion above), as well as GO 66-C, Pub. Util. Code §§ 454.5(g) and 583, and Evidence Code § 1060.

The information at issue relates to the same generators discussed in connection with the 8/1/06 Motion. SCE states that the information need only be kept confidential pursuant to FERC Order No. 2003 until the applicable transmission provider posts the results of the interconnection studies on the

¹³ 12/22/05 Motion at 5.

Internet, or until the generator enters into a Large Generator Interconnection Agreement (LGIA)¹⁴ under FERC Order No. 2003, whichever comes first.

I find in discussing the 8/1/06 motion above that some information regarding these generators is not confidential. Because it is unclear whether SCE still seeks confidential treatment, and it would be more consistent with our rulings above to evaluate SCE's claim pursuant to D.06-06-066, SCE may refile its motion if it still seeks confidential treatment of such information. SCE shall either supplement its motion within 15 days of the date of this ruling with the required information (using a table like the one set forth in this ruling), or serve the sealed information (or a notice of availability) on that date to the parties to this proceeding and all parties on which it is required to serve its RPS filings.

5. SCE's 4/3/07 Motion

SCE's 4/3/07 motion seeks confidentiality protection for information in its April 3, 2007 RPS compliance filing, as set forth in the table below. However, SCE does not set forth the five D.06-06-066 factors (listed in the middle column below).¹⁵ Rather, it simply asserts that "the following portions all relate to information regarding SCE's forecast of bundled customer energy." This showing does not meet SCE's burden of proof, and I therefore deny SCE's 4/3/07 motion without prejudice. SCE shall either supplement its motion within 15 days of the date of this ruling with the required information (using a table like the one below), or serve the sealed information (or a notice of availability) on that

¹⁴ See 104 F.E.R.C. ¶ 61,103, 2003 FERC LEXIS 1551.

¹⁵ The Commission ordered a party seeking confidential treatment under the D.06-06-066 Matrix to meet these five factors. D.06-06-066, Ordering Paragraph 2.

date to the parties to this proceeding and all parties on which it is required to serve its RPS filings.

Data at issue	D.06-06-066 Matrix Requirements	How moving party meets requirement
RPS Compliance Report: Accounting, line 5: 2007-2009. RPS Compliance Report: Accounting, line 7-13, 26, 35, 36, and 38: 2008-2009. RPS Compliance Report: Procurement Detail, Total Retail Sales: 2007-2009.	That the material it is submitting constitutes a particular type of data listed in the Matrix	SCE asserts information covered in: Matrix Section V(C) - "Load Forecast Information and Data - Electric, LSE Total Energy Forecast, Bundled Customer"
RPS Compliance Report: Procurement Detail, Actual RPS Procurement %: 2008-2009.	Which category or categories in the Matrix the data correspond to	
RPS Compliance Report: Procurement Detail, IPT: 2008-2009.	That the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data	
RPS Compliance Report: Procurement Detail, APT % (Baseline for 2003): 2008-2009.	That the information is not already public	
RPS Compliance Report: Procurement Detail, APT as MWh Amount: 2008-2009.	That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure	
RPS Compliance Report: Procurement Detail, Graph entitled "XYZ Actual and Expected RPS Generation vs. Target."		

In all future filings, SCE shall include with any request for confidentiality a table that lists the five D.06-06-066 Matrix requirements, and explains how each item of data meets the Matrix. This should make the task of ruling on future motions easier.

IT IS RULED THAT:

1. Southern California Edison Company (SCE) shall comply with this ruling by either serving information I find not confidential (or a notice of availability) on the service list for this proceeding and the parties on whom it was required to serve the information that is the subject of each motion, or, where specified, file a new or revised motion addressing the deficiencies discussed in connection with each motion. SCE shall take either action within 15 days of this ruling.
2. Where I rule that information is confidential, SCE shall produce it, upon request, to non-market participants and market participants, as defined in Decision (D.) 06-12-030, according to the procedures set forth in that decision.
3. In all future filings, SCE shall include with any request for confidentiality a table that lists the five D.06-06-066 Matrix requirements, and explains how each item of data meets the Matrix. This should make the task of ruling on future motions easier.

Dated April 30, 2007, at San Francisco, California.

/s/ BURTON W. MATTSON
Burton W. Mattson
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability is current as of today's date.

Dated April 30, 2007, at San Francisco, California.

/s/ ANTONINA V. SWANSEN
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